CSCanada
Canadian Social Science
Vol. 21, No. 1, 2025, pp. 29-33
DOI:10.3968/13686

ISSN 1712-8056[Print]
ISSN 1923-6697[Online]
www.cscanada.net
www.cscanada.org

The First Criminal Juries in Medieval England

Tamás Antal[a],*

[a] Full professor at the Department of European Legal History, University of Szeged, Szeged, Hungary.
*Corresponding author.

Supported by the Research Group "Historical legal antecedents and solution models of contemporary social challenges" of the Interdisciplinary Research Development and Innovation Center of Excellence (IKIKK) at the University of Szeged (Hungary).

Received 26 December 2024; accepted 23 January 2025
Published online 26 February 2025

Abstract

The documented beginnings of the jury's history can be found in the second half of the 12th-century England, while its prehistory can be traced back to earlier and, according to most researchers, to the European Continent. In this study, the author presents the legal sources and reasons for its development in England, with special attention to the appearance of the first form of this legal institution, the grand jury, in the heroic age of the creation of the English common law, through laws issued by King Henry II. All this gives an insight into the criminal social conditions of the time, the period of transformation of private criminal law to public criminal law and the cooperation of royal justices and local juries in legal trials.

Key words: Legal history; Jury; Criminal law; Criminal procedure; Common law; England

Antal, T. (2025). The First Criminal Juries in Medieval England. *Canadian Social Science*, *21*(1), 29-33. Available from: http://www.cscanada.net/index.php/css/article/view/13686
DOI: http://dx.doi.org/10.3968/13686

INTRODUCTION

The origin of the English legal system - including its distinctive features such as writs, precedents and juries - has long intrigued British scholars, whose research has made it possible to trace the development of numerous legal institutions from the foundation of the English state, i.e. from the time of William I and William II. The laws of the first half of the 12th century, dating from the reign of Henry I, provide contemporary information, which reveals that after the consolidation of the power of the Dynasty of Normandy, the development of legal practice and the common law it reflected, also began (Downer, 1972). This was the beginning of the development of common law, which was continued and fulfilled by the grandson of King Henry mentioned, Henry II, who is aptly referred to as the "Father of the Common Law".[1] In this paper, from among his legislative reforms - in the elaboration of which the high courts had separated from the royal council and had become permanent during his reign certainly took a leading role (Carter, 1944, pp. 49-60, 68-77) - one of the first sources of law will be presented, which - from a historical perspective - also resulted in the establishment of the jury system.

1. THE ORIGIN OF MEDIEVAL JUDICATURE

The highly esteemed *Ralph V. Turner* wrote about the theories and sources of the origins of medieval English juries or assizes (Turner, 1994, pp. 35-44), which clearly show that the genesis of the institution undoubtedly goes back long before the Norman invasion, however, there is still no consensus on how far back in time and where geographically. The earliest sources of law after the foundation of the state in which the later concept of the jury - it would not be called trial by jury yet - is already

[1] Several Kings of England are mentioned in this article. Making easier to place them in history, here are the dates of their periods of ruling in a chronological order: Ethelred II of Wessex (978-1016), William I (1066-87), William II (1087-1100), Henry I (1100-35), Stephan of Blois (1135-54), Henry II (1154-89), Henry III (1216-72), Edward I (1272-1307).

documented and recognizable are the *Constitutions* issued in Clarendon in 1164 and the *Assize* issued in the same place in February 1166 (the term „Assize" here meaning statute and not court), this law was supplemented by a third one, the *Assize of Northampton* issued in 1176 (Douglas, Greenway, 1981, pp. 440-443, 444-446, 766-770). It is to be noted that before the 14th century, the word „Act" was not used in the English language, at least not for the laws issued by the king, which were referred to as doom, constitution, assize, writ, statute or charter (Maitland, 1908, pp. 6-20).

Clarendon, near Salisbury, came under increased royal interest as a geographical location in the 12th century, although there is evidence that the area was used as a hunting ground already in Anglo-Saxon times. Its name probably derives from the family name „Clare". From the time of William I - with a common name „the Conqueror" -, military parades were sometimes held there. It was Henry II who began turning it into a royal seat, which was later continued by Henry III, this is how it became a residence by the mid-13th century. The remains of the former palace and fortress can still be seen today (Howell, 2001, pp. 72-73; Ekbolm, 1917, p.57).

Henry II, the first Angevin ruler, played an active role in reshaping the Anglo-Saxon legal system, which had its origins in the so-called Heptarchy period (the confederation of seven pre-feudal monarchies on the territory of England before 1066).[2] As Duke of Normandy, too, he was presumably familiar with the legal institutions of France at the time, including the legacy of the Western Frankish Empire *(Francia occidentalis)*. Hence the assumption derived by most people that reliable but non-royal officials would give the king sworn „testimony", information about the functioning of the territorial bodies or their people, as they had experienced from time to time. This practice was already adopted by William the Conqueror (Hostettler, 2004, p.16; Hoffman, 2014, pp. 235-236). Henry II ascended to the throne succeeding Stephen of Blois, after the „nineteen long winters", i.e. two decades of patrimonial anarchy. Crimes multiplied, and the new king had to restore peace in the country, showing that criminal acts harmed not only the interests of passive subjects in the strict sense, but also indirectly those of the Crown (i.e. King's peace) (Pollock 1899; Hurnard, 1969, pp. 8-9; Ruszoly, 2011, pp. 606-614).

Before *Magna Charta Libertatum* (1215), the central (and later the high) courts followed the king in England as they did in other countries because the royal court and the council *(curia/aula regis)* were usually on the move, with no permanent seat. Once, allegedly, a plaintiff had to wander after the court all over England and France (Normandy) for five years to finally have his complaint heard by the king's court (Nield, 1972, pp. 2-3). The Magna Charta therefore decreed that the Common Pleas (and other courts of royal presence) should henceforth be located in one place, which became Westminster in practice, at least after 1234 (Turner, 1994, pp. 18-20, 27-28). However, this did not solve the legislative problems of the shires and counties far from London, so the institution of *itinerant justices* had to be established earlier. Henry II is known to have divided the kingdom into six circuits in 1176, appointing one itinerant justice to each of them, who were also members of the common law central courts, and who - at least according to the Charter - were required to visit their respective circuits four times a year. This was called the Eyre, which was a kind of circuit hearings; the very first one was held in 1166 for the eastern part of the kingdom (Brand, 2015, pp. 3-6; Turner 1985, pp. 17-25). The author of the contemporary *Dialogus de Scaccario* had the following opinion on the itinerant judges: „They, giving audience in each county, and doing full justice to those who considered themselves wronged, saved the poor both money and labour" (Turner, 1985, p.10).

All this required efficient administration of justice, more unified than before and reinforced by royal authority, replacing predominantly territorial legislative institutions. Moreover, in contrast to accusatorial procedures in which ordeals played an essential role, it was around this time that the development of Western European laws began to contemplate new types of evidentiary systems, the emblematic year and event of which was the Fourth Lateran Council of 1215 (Szuromi, 2016), but the wavering of faith in the infallibility of divine judgments undoubtedly began earlier. This will be of relevance to our topic. The prohibition of ordeals in England first appeared in 1219 (Hoffman, 2014, p.236).

Overall, it is not an exaggeration to say that it was during the reign of Henry II that the framework of the medieval English court system and the application of law was shaped, some elements of which are still in effect today, and which may not have been entirely unique in 12th-century Europe, but it survived in the long term and in a form suitable for research only in England. These can be reconstructed mainly from royal laws, from the records and rolls of the royal high courts that were established and became permanent, and from the collection of writs commonly known as *Glanvill* (Hall, Clanchy, 1965).[3] In contrast to the very limited number of documents from

[2] The early confederation of Anglo-Saxon Essex, Wessex, Sussex, Kent, Cambria, Mercia and Northumbria is frequently named *Heptarchia* in history, although this Latin expression appeared at the first time only in the works of Henry of Huntingdon in the 12th century. The last leaders of the alliance were Edward the Confessor (1042-66) and his brother-in-law, Harold II (1066). (Maitland, 1908, pp. 1-6).

[3] Three works written by royal justices with high reputation: the legal treatises of Ranulf de Glanvill and Henry de Bracton, as well as the *Dialogus de Scaccario* by Richard fitz Neal are the significant collections of the legal norms and practice of that age. Glanvill and fitz Neal served under the reign of Henry II (Turner, 1985, pp. 9-11).

this period in many European states, the contemporary English sources of documents (case materials) from the turn of the 12th and 13th centuries appear to be rich (Groot, 1982).

2. THE LEGACY OF CLARENDON AND NORTHAMPTON

The *Constitutions of Clarendon* (1164) thus marked the beginning, in which Henry II provided the possibility that in cases where no single person dared to accuse a wealthy and influential person, twelve lawful men from the neighborhood or town could swear in the presence of the bishop to manifest the „truth" in this matter jointly (Hostettler, 2004, pp. 17-18). The reason why exactly twelve men were chosen has not yet been established with certainty; the number may be of biblical origin, or may possibly be related to a law issued in 997 in Wantage by Ethelred II, former King of Wessex, in which reference is made to a body of knights (thegns) assembling under oath - also with a dozen participants (Turner, 1994, pp. 36-38). Researchers have found rolls from the period of the Norman conquest, i.e. the last third of the 11th century, as well as from the time of Stephen of Blois and from the early years of Henry II's reign, in which men referred to as *juratores* were mentioned; their role in the trial is also interpreted in literature as fact-finding (Hurnard, 1969, pp. 378-379, 382-383; Caenegem, 1959, pp. 62-63; Turner, 1994, pp. 41-42).

The most important source of law, however, is the decree of 1166, known as the *Assize of Clarendon*, which, among other things, records the creation of the presenting jury or grand jury, when in its first article, the king ordered the crown vassals that from then on twelve lawful (reliable) men from each hundred shall, upon oath, assist the itinerant justices. As previously mentioned, the system of itinerant justices - including judgment with a jury known from the time of the 13th century as *Nisi prius* - can also be traced back to this time, as the two were closely interrelated.[4] Under this system, the royal justices travelled to circuits every half or quarter of a year so that cases before the royal courts could be brought not only in the King's court, and from the 13th century onwards in Westminster, but also in the rural (shire, county) courts, by the chief justices „making house calls" and, if there was no obstacle, they settled the properly prepared cases locally. It was in the latter that the sheriffs and the jurors had significant responsibilities (Carter, 1944, pp. 59-60; Baker, 2007, pp. 20-22, 72-74).

The twelve jurors from each hundred and the four jurors from each town were available on the arrival of the royal chief justice to inform him about the crime situation in the neighborhood, more specifically about the notorious or dangerous evildoers they knew: robbers, murderers and thieves, or anybody who was a receiver of them. What exactly all this meant cannot be clearly answered. In any case, not only were these men not laymen, but they were rather *well-informed* about local conditions, and it was precisely this knowledge that helped to punish or prevent crimes. At the same time, what is known about the subsequent procedure is that the named evildoers, whether explicitly accused or only alleged, and certainly in denial, had to be put to the ordeal of water as prescribed by law (Kerr, Forsyth, Plyley, 1992; Ruszoly, 2011, pp. 575-576), but it cannot be said with certainty that the otherwise discretionary decision of the jurors automatically entailed the mandatory application of divine judgment. Presumably, a distinction had to be made between jurors knowing for certain that the person named had committed the act to be punished, and merely assuming or hearing that a person of ill repute had done so (Groot, 1982, pp. 5-6). It follows from this that the jurors in question may have played a role in „sorting out" the suspects, precisely to avoid subjecting all suspects to the cruel test. This brings us to the issue of ordeal *(ordalium)* or divine judgment *(judicium Dei)*.

Ultimately, the royal power thus began to rationalize and make the system of criminal justice consistent in England, by making the listed crimes - of great material weight - no longer possible to judge or settle within the framework of private criminal law and its associated composition, as in Anglo-Saxon times, but on the other hand, this increased the number of those who were punished by mutilation or execution instead of financial punishment *(compositio)* (Green, 1985, pp. 9-10). Public criminal law was thus strengthened through presenting juries in England in the second half of the 12th century. This is also evidenced by the *Assize of Northampton* issued ten years later, which added forgery and arson to the three principal offences, further extending royal high judgment instead of trials by local sheriffs - who could be influenced by barons - or by private parties (Douglas, Greenway, 1981, pp. 444-446). At the same time, it is important to note that even before the two Assizes - during both the Anglo-Saxon and the Norman periods - there must have been means to ensure that not only some kind of private accusation brought by the victim, but also other ways were available to hold the offenders accountable and punish them, whether initiated by the violated local community or through royal administration (Turner, 1994, pp. 42-43).

The aforementioned Assize of Clarendon and Assize of Northampton eventually gave rise to not only the Eyre, but to the *grand jury* as well; the latter one was considered a fairly modern institution at the time, and did not change much over the centuries after it essentially reached its

[4] There were several writs for trials *Nisi prius* at that time. Three of them with assizes were mentioned in Section 18 of Magna Charta (1215) as well: *writ of novel disseisin*, *writ of mort d'ancestor* and *writ of darrein presentment*, but these possessory actions were rather in the sphere of private law than criminal law.

classical form during the reign of Edward I and by the first statute regulating the conditions of eligibility for jury service in the Statute of Westminster of 1285 (Powell, 1988, pp. 82-83, 94-95; Masschaele, 2008, pp. 141-142). In the early 14th century, the separation of the grand jury and the trial jury was completed; the former usually consisted of 20-23 members.

If we compare the parallel texts of the two Assizes under discussion, it can be recognized that in the second one there are six offences mentioned not three: murder, theft, robbery - plus forgery, arson and treason. It is also worth to mention that treason is incorporated only into the very last sentence of the first section, the others are specified earlier, at the beginning. The Assize of Northampton contains some exceptions concerning to the cruel punishment in the cases of petty theft and robbery committed in a wartime period. Further, the expression „accused by the commons of the county" appears only there, too, while the Assize of Clarendon uses the more neutral words that the lawful men „speak the truth whether there be any accused or suspect[ed] men" both in English and Latin versions (Douglas, Greenway, 1981, pp. 440-446). It makes clear that their task was only fact-finding and not giving a verdict in the later sense.

Assize of Clarendon	Assize of Northampton
[1] In the first place the aforesaid King Henry, on the advice of all his barons, for the preservation of peace, and for the maintenance of justice, has decreed that inquiry shall be made throughout the several counties and throughout the several hundreds through twelve of the more lawful men of the hundred and through four of the more lawful men of each vill[age] upon oath that they will speak the truth, whether there be in their hundred or vill[age] any man accused or notoriously suspect of being a robber or murderer or thief, or any who is a receiver of robbers or murderers or thieves, since the lord king has been king. And let the justices inquire into this among themselves and the sheriffs among themselves. [2] And let anyone, who shall be found, on the oath of the aforesaid, accused or notoriously suspect of having been a robber or murderer or thief, or a receiver of them, since the lord king has been king, be taken and put to the ordeal of water, and let him swear that he has not been a robber or murderer or thief, or receiver of them, since the lord king has been king, to the value of 5 shillings, so far as he knows.	[1] If anyone has been accused before the justices of the lord king of murder or theft or robbery or of harbouring men who do such things, or of forgery or arson by the oath of twelve knights of the hundred or, if knights be not present, by the oath of twelve free and lawful men and by the oath of four men from each vill[age] of the hundred, let him go to the ordeal of water, and if he fail, let him lose one foot. And at Northampton it was added for the sake of stern justice that he shall likewise lose his right hand with his foot, and shall abjure the realm and within forty days be banished from the kingdom. And if he shall be cleared of guilt at the water, let him provide sureties and remain in the kingdom, unless he has been accused of murder or some other base felony by the commons of the county and of the lawful knights of the country; moreover, if he has been accused in the aforesaid manner, although he may have come safely through the ordeal of water, nevertheless let him depart from the realm within forty days, and let him take his chattels with him, saving the rights of his lords, and let him abjure the realm at the mercy of the lord king. Moreover, this assize shall remain in force from the time the assize was made at Clarendon continuously up to the present time and from now on, so long as it shall please the lord king, in cases of murder and treason and arson and in all the aforesaid articles, except in cases of petty thefts and robberies, which have been committed in time of war, as of horses and oxen and lesser things.

CONCLUSION

The ancient form of prosecution by a grand jury continued to operate throughout the country until 1933, and in London and Middlesex County until 1948 (Devlin, 1956, p.9), and the system of itinerant justices with its associated courts (quarter sessions, assize courts) existed in England until the Courts Act of 1971.

As can be seen, in the early medieval period of the jury's history, jurors did not go to court to „listen" but rather to „speak" (Langbein, 2015, pp. 69-72), and thus they were actually not „laymen" but very well-informed men *(self-informing jury)*, at least about local conditions, including personal and property relations, as well as local customary law. Their task was clearly aimed at ascertaining the facts *(fact-finding jury)*, so they had an inquisitorial nature (Groot, 1982, pp. 20-21; Hoffman, 2014, p.237), and the royal justice was responsible for deciding and pronouncing questions of law, provided that questions of fact and law could be separated from each other. Subsequent development pointed in the direction that the jurors should preferably keep to finding the facts, but there were undoubtedly juries (grand assizes) - especially in private law disputes - that could be addressed with questions of law, too. Since the proof of facts became the responsibility of a typically twelve-member body, the possibility of ordinary procedural remedy was essentially excluded, and largely remained so in England.

At the same time, it is important to emphasize that the creation of the jury *ab ovo* was not directly for the abstract purpose of legal development, but for the administrative reason to ensure that cases before the royal presence could be tried as efficiently and fast as possible (Baker, 2007, p.80). As *D. J. Seipp* wrote, „jurors are the unsung heroes of the common law. Jurors gave the verdicts that made the whole system possible. Without the enforced co-operation of jurors, the tiny number of royal justices - usually 12 or 13 at any one time - could not possibly have solved the thousands of disputes that came to judgement every year in the expending jurisdiction of the common law" (Seipp, 2002, p.75).

REFERENCES

Baker, J. H. (2007). *An Introduction to English Legal History*. Oxford.

Brand, p.(2015). Judges and Judging 1176-1307. In P. Brand & J. Getzler (Eds.), *Judges and Judging in the History of the Common Law and Civil Law: from Antiquity to Modern Times* (pp.3-36). Cambridge.

Caenegem, R. C. Van (1959). *Royal Writs in England from the Conquest to Glanvill*. London.

Carter, A. T. (1944). *A History of the English Courts*. London.

Devlin, Sir P. (1956). *Trial by Jury*. London.

Douglas, D. C., & Greenway, G. W. (Eds.) (1981). *English Historical Documents: Vol. II, 1042-1189*. London-New York.

Downer, L. J. (1972). *Leges Henrici Primi*. Oxford.

Ekblom, E. (1917). *The Place-Names of Wiltshire. Their Origin and History*. Uppsala.

Green, T. A. (1985). *Verdict According to Conscience: Perspectives on the English Criminal Trial Jury, 1200-1800*. London-Chicago.

Groot, R. D. (1982). The Jury of Presentment before 1215. *American Journal of Legal History*, *26*(1), 1-24. (https://doi.org/10.2307/844604)

Hall, G. D. G., & Clanchy, M. T. (Eds.) (1965). *Tractatus de legibus et consuetudinibus regni Anglie qui Glanvilla vocatur. / The Treatise on the Laws and Customs of the Realm of England Commonly Called Glanvill*. Oxford.

Hoffman, M. B. (2014). *The Punisher's Brain. The Evolution of Judge and Jury*. Cambridge-New York.

Hostettler, J. (2004). *The Criminal Jury Old and New: Jury Power from the Early Times to the Present Day*. Winchester.

Howell, M. (2001). *Eleanor of Provence. Queenship in Thirteenth-Century England*. Oxford-Malden.

Hurnard, N. D. (1941). The Jury of Presentment and the Assize of Clarendon. In: *The English Historical Review*, *56*(223), 374-410.

Hurnard, N. D. (1969). *The King's Pardon for Homicide before A.D. 1307*. Oxford.

Kerr, M. H., Forsyth, R. D., & Plyley, M. J. (1992). Cold Water and Hot Iron: Trial by Ordeal in England. In: *The Journal of Interdisciplinary History*, *22*(4), 573-595.

Langbein, J. H. (2015). Bifurcation and the Bench: The Influence of the Jury on English Conceptions of the Judiciary. In P. Brand & J. Getzler (Eds.), *Judges and Judging in the History of the Common Law and Civil Law: from Antiquity to Modern Times* (pp.67-82). Cambridge.

Maitland, F. W. (1908). *The Constitutional History of England*. Cambridge.

Masschaele, J. (2008). *Jury, State, and Society in Medieval England*. New York.

Nield, B. (1972). *Farewell to the Assizes: The Sixty-one Towns*. London.

Pollock, F. (1899). The King's Peace in the Middle Ages. In: *Harvard Law Review*, *13*(3), 177-189. https://doi.org/10.2307/1322581

Powell, E. (1988). Jury Trial at Goal Delivery in the Late Middle Ages: The Midland Circuit, 1400-1429. In J. S. Cockburn & T. A. Green (Eds.). *Twelve Good Men and True: The Criminal Trial Jury in England, 1200-1800* (pp.78-116). Princeton, N.J.

Ruszoly, József (2011). *Európai jog- és alkotmánytörténelem*. [European Legal and Constitutional History] = Opera Iurisprudentiae 1. Szeged.

Seipp, D. J. (2002). Jurors, Evidences and the Tempest of 1499. In J. W. Cairns & G. McLeod (Eds.), *"The Dearest Birth Right of the People of England": The Jury in the History of the Common Law* (pp.75-92). Oxford.

Szuromi, Sz. A. (2006). A IV. Lateráni Zsinat (1215) határozatainak jelentősége teológiai, jogi és történeti szempontból. [The Importance of the Resolutions of Lateran Council IV (1215) in Theological, Legal and Historical Aspects]. *Teológia. Hittudományi Folyóirat*, *40*(1-2), 85-95.

Turner, R. V. (1985). *The English Judiciary in the Age of Glanvill and Bracton, c. 1176-1239*. Cambridge.

Turner, R. V. (1994). *Judges, Administrators and the Common Law in Angevin England*. London.